IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.443 OF 2004
IN
SUMMARY SUIT NO.1223 OF 2004

Anilkumar Wadhi .. Plaintiff

Vs.

Mansourovar Dream Homes P.Ltd.
(Formerly known as Kabra Builders
and Developers P.Ltd.) .. Defendants

Mr.Rushabh Shah i/b Halai and Co. for the plaintiff

Mr.Shailesh Shah a/w Y.N.Tripathi for the defendants

CORAM : S.U.KAMDAR, J
DATED : 31ST AUGUST, 2005

P.C.:

. The present suit is filed on alleged confirmation in respect of Ex.A. The learned counsel states that the said claim is maintainable as summary suit and placed reliance on the Division Bench Judgment of this court in the case of Gokulprasad Poddar Vs.Ramrikhdas Parasrampuria and Co. reported in AIR 1955 BOM 276. Reliance placed on the aforesaid judgment is totally inappropriate. The said judgment interprets the provision of Order 37 Rule 2 as existing prior to Amendment Act of

1976 and in the light of the said Order 37 Rule 2 of the Civil Procedure Code which was existing prior to Amendment Act, Division Bench has taken a view that the suit is maintainable as Summary Suit even on implied contract though the same is not in writing. Order 37 Rule 2 now specifically requires contract to in writing and therefore in my view the basis of the Judgment of the Division Bench has been legislatively overruled. In view thereof summary suit is not maintainable. Summons for Judgment is dismissed. Unconditional leave to defend is granted. Suit is transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.